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September 30, 1997

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

William F. Caton, Secretary
Federal Communications Commission
Room 222
1919 M Street, NW
Washington, DC 20554

Dear Mr. Caton:

Enclosed for filing is an original and four copies of the reply comments of Citizens Communications in response to the Further Notice of Proposed Rulemaking in CC Docket No. 94-129, FCC 97-248 (released July 15, 1997). Also enclosed is a receipt copy.

Please date stamp the enclosed receipt copy and return it to the messenger delivering these materials.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "John B. Adams".

John B. Adams
Senior Attorney

CC: Cathy Seidel
ITS

Enclosure

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

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SEP 30 1997

COMMUNICATIONS SECTION

In the Matter of)
)
Implementation of the Subscriber Carrier)
Selection Changes Provisions of the)
Telecommunications Act of 1996)
)
Policies and Rules Concerning)
Unauthorized Changes of Consumers')
Long Distance Carriers)

CC Docket No. 94-129

REPLY COMMENTS OF CITIZENS COMMUNICATIONS

Citizens Utilities Company, on behalf of itself and its telecommunications subsidiaries (collectively, Citizens), by its attorney, hereby submits its reply comments in response to the Commission's Further Notice of Proposed Rulemaking (FNPRM) and Memorandum Opinion and Order on Reconsideration (FCC 97-248) released July 15, 1997 and Public Notice (DA 97-1746) released August 15, 1997 in the above-captioned proceeding and shows as follows:

I. INTRODUCTION

It is clear from the initial comments filed in this proceeding that there is near unanimous agreement that the best way to fight slamming is to remove the economic incentives to engage in it.¹ The commenters agree that by making slamming unprofitable, intentional slamming will cease to be the significant problem that it is today. Opinions diverge, however, over the

¹ See, e.g., Ameritech at 27-28; Bell Atlantic at 14; New York Dept. of Public Services (NYDPS) at 10-11; National Association of Attorneys General (NAAG) at 5; Cincinnati Bell (CBT) at 2; Southwestern Bell (SWBT) at 11; Time Warner at 11; MCI at 19.

appropriate method or combinations of methods to be employed to remove the profit from slamming. Several commenters primarily favor taking revenues away from the unauthorized carrier and giving them to the authorized carrier, either by means of a direct remittance or by means of allowing the authorized carrier to bill the customer using the unauthorized carrier's billing data.² Other commenters primarily advocate absolving the customer of the duty to pay for calls made on the unauthorized carrier's network.³ Finally, a few commenters favor stringent enforcement measures.⁴

Several commenters, including Citizens, make a distinction between carriers that intentionally slam customers and those that make an occasional unauthorized change through a good-faith mistake. Uniformly, these commenters agree that intentional slamming carries with it a much higher degree of culpability. Accordingly, a variety of proposals have been made to differentiate between good-faith mistakes and intentional slamming.⁵

Ultimately, Citizens believes that there must be some recognition of the level of culpability of the carrier that made the unauthorized change and a corresponding difference in the way the carrier is treated. At the same time, Citizens believes that the rules should be as clear and straightforward as possible. The approach advocated by Citizens in its comments struck an appropriate balance among the various competing interests.

² Time Warner at 12-13; MCI at 19, 23-24; Ameritech at 27-28; Bell Atlantic at 14; US West at 44-45; BellSouth at 14; CBT at 6; CompTel at 11-12; Cable & Wireless at 6-8; Texas Office of Public Utility Counsel (TXOPUC) at 4-5; GTE at 14-15.

³ NAAG at 5; Working Assets at 4; Citizens at 2-3; North Carolina PUC (NCPUC) at 5; Ohio Consumer's Counsel at 3; National Consumers League at 9; NYDPS at 10-11; Excel at 6-7 (favoring absolution at option of unauthorized carrier).

⁴ Sprint at 20-25, SWBT at 11, US West at 15-20.

⁵ Sprint at 1-20; Citizens at 3-4; MCI at 20-21; Telecommunications Resellers Association (TRA) at 13; RCN at 7.

II. REPLY COMMENTS

A. Absolution

The most straightforward way to remove the profit from slamming is to absolve the customer of any duty to pay for calls made on the unauthorized carrier's network. Such a rule would be clear to everyone. Customers would know with certainty that they have no duty to pay when they are slammed and would not be easily confused by an unauthorized carrier who might attempt to use the uncertainty created by a more complex rule to coerce a slammed customer to pay.⁶ Unscrupulous carriers who engage in slamming as a business practice would also know assuredly that they would receive no revenue from their wrongful actions.

In order to avoid undue procedural or other complexity, Citizens believes that the customer should be absolved of the duty to pay regardless of whether the slam was intentional or inadvertent. In addition to ensuring a clear and unambiguous rule, this creates an additional incentive for carriers to be careful to follow the verification rules.

Those commenters who oppose absolution do so uniformly on the basis that such a rule creates too great of an incentive for customers to engage in fraudulent activities, such as staying on the unauthorized carrier's network indefinitely to take advantage of "free" service, or claiming to have been slammed when they have not.⁷ Many commenters who advocate absolution also recognize and mention this danger.⁸ Citizens agrees with those commenters who advocate

⁶ Ohio Consumers' Counsel at 4; National Consumers League at 9.

⁷ BellSouth at 13; Worldcom at 13; AT&T at 8-11; US West at 44; Sprint at 27-30; CBT at 6; CompTel at 11-12; Cable & Wireless at 9, 11; SWBT at 11; Billing Information Concepts, Inc. at 6; MCI at 18-19; ACTA at 32, 33-35; Ameritech at 28; GTE at 14-15; Bell Atlantic at 14; RCN at 7-8.

⁸ NCPUC at 6; Citizens at 2-3; Working Assets at 4; NYDPS at 11. Some commenters who prefer proposals other than absolution also mention a time limit as a method of ensuring against consumer fraud if the Commission adopts absolution. Worldcom at 13; BellSouth at 13; MCI at 20; SWBT at 11.

limiting the time period during which a customer does not have to pay for calls on the unauthorized carrier's network.

Suggestions for limiting the time period reflect what the commenter views as a "reasonable" time. Specific proposals range from 10 days to three months.⁹ Citizens has proposed that 30 days from the time the customer receives notice of the slam should be the maximum amount of time allowed.¹⁰ This would allow the consumer a reasonable time to switch back to his or her carrier of choice, and would limit the unauthorized carrier's exposure for unbillable usage.

Other criticisms similarly are unpersuasive. The loss of revenue to the authorized carrier, along with its flipside, the creation of a windfall for consumers, fail to outweigh the need for a clear and unambiguous rule. As soon as exceptions are introduced into the rule, it becomes easier for unscrupulous carriers who intentionally slam to coerce customers into paying them.¹¹

Such unscrupulous carriers, and their principals, are not likely to then readily give up their ill-gotten gains, notwithstanding any rules to the contrary. Thus, a clear rule absolving customers of the duty to pay for calls completed on the unauthorized carrier's network is the most effective, efficient, and straightforward method of removing the profit from slamming.

B. Carrier-to-Carrier Remittance

1. Intentional Slamming

With respect to intentional slamming, a rule requiring the unauthorized carrier to remit to the authorized carrier any charges that it actually collects serves best as a complement to the

⁹ *Id.*

¹⁰ Citizens at 2-3.

¹¹ National Consumers League at 9; Ohio Consumers Counsel at 4.

primary rule of absolution. To the extent that a carrier collects charges from the customer, it should remit those revenues to the authorized carrier. The authorized carrier would then credit those revenues to the customer's account. This ensures that customers do not pay for calls carried on the unauthorized carrier's network and that unauthorized carriers keep no revenue from their wrongful acts.

Carrier-to-carrier remittance, however, should not be the primary method of removing the profit from intentional slamming. Unscrupulous carriers are unlikely to readily disgorge their ill-gotten gains. It is far better to keep revenue out of their hands than to attempt to remove it after they have it in their grasp.¹²

2. Inadvertent Slamming

As Citizens and several other commenters noted, carriers sometimes make mistakes.¹³ Further, given the level of automation and the sheer number of carrier changes, especially with the advent of intraLATA dialing parity and local competition, mistakes are going to occur. In such instances, though, the unauthorized carrier does not have the same level of culpability as in cases of intentional slamming. Further, withholding revenue from the unauthorized carrier does not have the same deterrent effect as in the case of intentional slamming. Moreover, the same public policy concern about preventing carriers from profiting from their wrongful acts is not present. Accordingly, in instances of inadvertent slamming, the unauthorized carrier should keep whatever revenue it actually collects,¹⁴ although the customer will not be under any duty to pay. This approach mitigates concerns raised by some commenters about customer windfalls, while at

¹² Ameritech at 27-28; NYDPS at 10-11.


¹³ See *supra* note 5.

¹⁴ Cf. TRA at 13.

the same time preserving the main rule of absolution and accounting for the level of culpability
of the unauthorized carrier.

Respectfully Submitted,

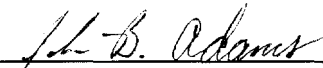
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September 30, 1997

Certificate of Service

I, John B. Adams, Senior Attorney for Citizens Utilities Company, certify that a copy of the foregoing "Reply Comments of Citizens Communications" has been served upon the following by first class mail this 30th day of September, 1997.


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